



CITY OF DANBURY

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

PLANNING COMMISSION
www.danbury-ct.gov

(203) 797-4525
(203) 797-4586 (FAX)

May 4, 2021

TO: Richard S. Jowdy, Chairman, Zoning Board of Appeals

FROM: Arnold E. Finaldi Jr., Chairman, Planning Commission

RE: ZBA Referral/ Zoning Board of Appeals Application #21-09: 3 Lake Avenue Extension LLC, 3 Lake Ave. Ext., (G15005), CA-80 Zone, Use Variance Sec. 5.B.2.a., Allow use of the property as "shelter for homeless with conditions."

At the regular meeting held on April 21, 2021, the Planning Commission reviewed the above referenced use variance application in accordance with Sec. 11.B.4.a. of the Zoning Regulations and voted to give this application a **positive** recommendation with the conditions that (1) the deed restrictions (as attached to the ZBA application) be recorded on the land records with ten days of the variance approval and (2) a copy of the Planning Department staff report be attached to the written recommendation. The reason given for this motion was that approval of this application as presented will uphold the integrity of the Zoning Regulations based on the following items:

- (A) this new "shelter" model will benefit the homeless in additional ways by offering counseling and other support services;
- (B) the New Street shelter will be permanently closed and the operation of this facility will be handled collaboratively by both the State Department of Housing and various local agencies including the City of Danbury;
- (C) this will add to the inventory of affordable housing units being provided by the City.
- (D) this is consistent with the Land Development Plan and the Housing Section in the Plan of Conservation & Development (POCD).

The motion for a positive recommendation was made by Mrs. Hoffstaetter, seconded by Mr. Chiochio, and passed with five ayes from Mr. Chiochio, Mrs. Hoffstaetter, Mr. Salvagne, Mr. Urice and Chairman Finaldi.

AEF/jr

Attachment: Planning Department Staff Report dated April 15, 2021



CITY OF DANBURY

155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

PLANNING & ZONING DEPARTMENT
www.danbury-ct.gov

(203) 797-4525
(203) 797-4586 (FAX)

To: City of Danbury Planning Commission
City of Danbury Zoning Commission

From: Sharon B. Calitro, AICP, Planning Director

Date: April 15, 2021

Re: Application for Use Variance in CA-80 Zone, 3 Lake Avenue Extension LLC
3 Lake Avenue Extension, Tax Assessors Lot G15005

The Zoning Board of Appeals (“ZBA”) has received an application for a use variance from 3 Lake Avenue Extension LLC for Tax Assessor Lot G15005 located at 3 Lake Avenue Extension. 3 Lake Avenue Extension LLC is the LLC of Pacific House West, the contract purchaser of the site. The current owner of the site, Ram Krishna PR LLC, authorized submission of the use variance application.

The application proposes to vary Section 5.B.2.a of the Zoning Regulations to allow a shelter for the homeless with conditions on the above-referenced site. The site, located in the CA-80 Zone, is currently occupied by an 86-room hotel structure that has, since March 2020, also been utilized, under direction of the State of Connecticut Departments of Housing (“DOH”) and Public Health (“DPH”), as a shelter for the homeless.

In accordance with Section 11.B.4.a. of the Regulations, the ZBA has referred this application to both commissions for review and report. The ZBA public hearing is scheduled for May 13, 2021.

The hardship given by the applicant as to why the use variance should be granted is contained in the application.

Per the application, in furtherance of the Governor’s Executive Order No. 7P to provide or arrange for non-congregate housing for people who, from the nature of their existing housing, are at increased risk of exposure to, infection with, or transmission of COVID-19, the State DOH informed homeless shelter providers (including the City of Danbury) of the availability of alternate housing. In this regard, the State DOH proposes to utilize federal Coronavirus Aid, Relief, and Economic Security “CARES” Act funds from the US Department of Housing & Urban Development to purchase and establish a non-congregate emergency homeless shelter at this site. The DOH has determined that the project will not have a significant impact on the

human environment and therefore no Environmental Impact Statement under the National Environmental Policy Act of 1969 is required.

Comments on the Application

The CA-80 Zone is an arterial commercial Zoning District that allows a variety of uses. The site proposed to be used as a shelter for the homeless with conditions is 1.52 acres in size and is considered a preexisting non-conforming lot. A copy of the approved site plan from 1987 was also included with the variance application. Hotels and motels are permitted uses in the CA-80 Zone.

Vehicular access to the lot is from an arterial road, Lake Avenue Extension. The lot borders State land of Interstate 84 and land of the Danbury Housing Authority in the RMF-4 Zone, a multi-tenant retail structure in the CA-80 Zone, and a gasoline station in the CN-5 Zone.

The applicant has proposed a number of conditions that include, among other restrictions, provisions that would limit the number of supportive housing rooms in the building, restrict any rooms that individuals experiencing homelessness occupy from having cooking appliances/venting that would constitute a kitchen, identification of required information and other plans that may be required for permits, and assurances that all rooms would meet the definition of affordable housing within the meaning of CGS Section 8-30g via recorded deed restrictions.

As you are aware, granting of a use variance extends a right to use property that is not extended to other landowners. A ZBA cannot grant a variance for a use which is inconsistent with the general purpose and intent of the Zoning Regulations or which impairs the integrity of the comprehensive plan (the zoning regulations), see Fuller Section 9.2, *Connecticut Land Use Law and Practice*. Hotels are permitted uses in the Zone and proffer rooms to transient guests and often provide rooms for other accessory uses such as conferences. Shelters also provide lodging to a transient population and in this specific case, will also be required to provide supportive services in other rooms. For the supportive housing rooms, Staff understands from the petitioner that the State will issue vouchers as payments to 3 Lake Avenue Extension LLC to aid in the operation of the facility.

In terms of the definition of the rooms in the facility, neither hotels or motels nor shelters for the homeless are considered dwelling units under the Zoning Regulations. And, the prohibition on cooking facilities within rooms occupied by those experiencing homelessness will ensure that said rooms do not become dwelling units.

Therefore, in this specific instance, under the declared public health and civil preparedness emergency and State DPH orders regarding housing for persons experiencing homelessness, and in accordance with Section 9-2 of Fuller, the commissions may reasonably conclude that this use variance would not result in a substantial change in the uses permitted in the CA-80 Zone.

Proposed conditions “g,” “j,” “k,” and “l” regarding requirements for supportive services, compliance with CGS Section 8-30g, and the proposed deed restrictions all provide public benefits for the City of Danbury. The condition mandating support services ensures that the facility will not just provide a bed with a meal but will provide its clients with services necessary to enable them to transition to permanent housing and self-sufficiency. The deed restrictions related to affordable housing ensure that the rooms/beds will count towards the City’s tally of

affordable housing units and/or for a future moratorium. The addition of affordable units, deed restricted or governmentally assisted, is a significant benefit to the City.

Plan of Conservation and Development (“POCD”)

The Land Development Plan Map of the POCD recommends this property be used for general commercial uses, which includes “a wide range of retail sales and services, offices, medical facilities, entertainment, community facilities, wholesale distribution, assisted living and nursing homes.” Hotels provide a service as they serve transient persons, much the same a homeless shelter, except that their guests pay. Those individuals experiencing homelessness are without shelter and, in many instances, without sufficient funds to pay. The commissions could reasonably conclude that use of the site as a shelter for the homeless, while not specifically noted in the General Commercial description, is a similar use as a hotel and therefore not inconsistent with the property designation on the Land Development Plan Map. Similarly, shelters are allowed in the CBD and RH-3 Zoning Districts while not listed in the category of land uses as noted in the POCD for those designations.

The Housing section of the POCD (page 35) provides that the City should undertake actions to expand the supply of affordable housing. As a condition of this use variance, the beds/rooms within the proposed shelter will be required to meet the definition of affordable housing within the meaning of CGS Section 8-30g and therefore the use is consistent with this recommendation. These affordable housing conditions ensure that Danbury will increase its number of affordable units (as defined in the statute) for the purposes of the Affordable Housing Appeals list and any related moratorium application.

The Housing section (page 36) also recommends the support of actions that meet the housing needs of special needs groups, including the homeless. In the case of Pacific House West and the plans for the use of the site, a condition requires that the shelter contain rooms for supportive services including but not limited to “social and case management services, counseling and similar programs and supportive services to enable individuals experiencing homelessness to transition to permanent housing and self-sufficiency.” This is the new prototype for transitional and supportive facilities providing services to address the needs of individuals experiencing homelessness and, in the present instance, is a model endorsed by the State. Therefore, the commissions may reasonably conclude that the proposed use is consistent with this section of the POCD.

Conclusion

Purchase and use of the site as proposed for a shelter utilizing federal funds allocated to the DOH represents a more global response to the issue of homelessness specifically, but not only, during the declared public health emergency. The public benefits associated with this use on this site include the provision of not just a place for a person experiencing homelessness to sleep and receive a meal but also counseling and other supportive services to help persons transition to permanent housing. The City’s shelter on New Street will cease operations as this new site will provide the approved alternative non-congregate housing consistent with the requirements of the State. This is also a benefit. The State DOH will continue to provide funds for the shelter operation and some oversight and, local agencies including the City of Danbury, will still be involved in housing for this population. This strategy represents a combined collaborative effort. Finally, and as significant, adding affordable units/beds to the City’s inventory of affordable

housing is a substantial benefit to the City. To ensure compliance with the affordable housing restrictions contained in conditions “j,” “k,” and “l,” Staff recommends the commissions add to the report to the ZBA that the ZBA condition the use variance on the applicant recording the deed restrictions, prepared to the satisfaction of the Office of the Corporation Counsel, within 10 days of the granting of the use variance.

Therefore, and for the above-stated reasons and including the noted recording condition, the application for this use variance with conditions upholds the integrity of the Zoning Regulations. As such, Staff has no objection to this request. Staff requests a copy of this report be attached to the reports sent by the commissions to the ZBA.

c: Sean Hearty, Zoning Enforcement Officer
 Robin Edwards, Assistant Corporation Counsel
 Jennifer Emminger, Deputy Planning Director
 Rafael Pagan, Jr., Exec. Director, 3 Lake Avenue Extension LLC
 H. Scott Miller, Attorney